IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

: O R D E R :

Sukhvinder Singh

Vs.

Addl. District Magistrate (Vigilance),
Sriganganagar & Another

**(S.B. Civil Writ Petition No.1416/1997)**

DATE OF ORDER : May 02, 2007

P R E S E N T

**Hon'ble Mr. Justice Gopal Krishan Vyas**

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Mr. S.L. Jain for the petitioner.
Mr. S.N. Tiwari, Dy. G.A.

BY THE COURT :

In this writ petition, the petitioner is seeking direction for quashing impugned order dated 05.02.1997 (Annex.-6) and respondents may be directed to record the land situated at Chak 52F, Muraba No.16, comprising of kila 1 to 5 in the name of the petitioner and entries for Samvat Year 2051 to 2054, standing in

the name of the Gurudwara, may be recorded in his name.

According to facts narrated inter alia in the petition, the petitioner's grand father late Kesar Singh was granthi of Gurudwara Chak 52F, Srikaranpur and being granthi of the Gurudwara he was village servant and allotment of the said land measuring 5 bigha was made in his favour on 07.08.1967 under the Rajasthan Colonisation (Gang Canal Permanent Allotment) Rules, 1957 (in short, "the Rules of 1957" hereinafter) at the rate of Rs.400/- per bigha. It is averred in the writ petition that entire price of the land has been paid off and the petitioner is in cultivatory possession of the said land.

It is submitted that the petitioner's grand father Keshar Singh died on 03.06.1979 and later on his father Surjeet Singh also died, however, the family remained in cultivatory possession of the land. According to the petitioner, while revenue camp was held in the village some villagers moved an application that late Keshar Singh never cultivated the aforesaid land which stands in the revenue record in the name of the Gurudwara and made a request to cancel the allotment made in favour of late Keshar Singh. The said application alongwith recommendation was sent to Sub-Divisional Officer, Srikaranpur who, in turn, sent the

papers to the Addl. Collector (Vigilance) Sriganganagar.

Before the Addl. Collector, respondent No.1 herein, both the parties were summoned and they produced documents before the authority. After consideration of the matter, the Addl. Collector (Vigilance) dismissed the application vide order dated 04.07.1980 holding that late Keshar Singh had khatedari rights over the land. Aggrieved by that order, one Tara Singh filed appeal before the Revenue Appellate Authority, Bikaner which, too, was dismissed on 04.10.1982.

It is submitted that thereafter another method was adopted for cancelling allotment of late Kesar Singh and for the same an application was filed before the District Collector for making a reference under Section 232 of the Rajasthan Tenancy Act to the Board of Revenue. Upon that application, the District Collector, Sriganganagar while holding that the land is Gurudwara mafi land and it has wrongly been allotted to late Keshar Singh who has expired and there is no legal successor living in the village and some other persons are cultivating the land, therefore, reference may be accepted and allotment made in favour of late Keshar Singh may be set aside.

The Board of Revenue, Adjmer registered the reference and notice was issued to Keshar Singh and it was found that though Keshar Singh got the information but, despite that, he failed to appear. Accordingly, arguments were heard ex parte and order was reserved. At last, vide judgment dated 07.03.1986 the Board of Revenue allowed the reference holding that the name of Kesar Singh shall be deleted and land may be entered in the name of Gurudwara in the revenue record.

After receipt of the order from the Board of Revenue, the Patwari Halka tried to dispossess the petitioner who is grand-son of late Keshar Singh, then, the petitioner came to know that the Board of Revenue has passed some order in pursuance of which he is being sought to be dispossessed. Thereafter, the petitioner immediately approached the Board of Revenue by way of filing review petition and prayed that order dated 07.03.1986 has been passed by the Board of Revenue against a dead person and the State failed to take steps for bringing on record the legal heirs of late Keshar Singh. Upon the said pleading, the review petition was allowed by the Board of Revenue vide order dated 07.01.1992 and order dated 07.03.1986 was recalled. The Board of Revenue, then, remitted the matter to the Collector, Sriganganagar and it was observed in the order that the

reference was made against dead person and without hearing the parties as such the reference cannot be accepted; but, in the fitness of things, the matter was remitted to the District Collector to decide the case afresh after hearing both the parties.

During the pendency of the proceedings before the Board of Revenue, the Tehsildar wrote a letter to to the Patwari Halka that in view of the order of the Board of Revenue, Ajmer dated 07.03.1986 name of Keshar Singh may be deleted from the Jamabandi from Samvat 2034 to 2037 and the land may be recorded in the name of Gurudwara.

The District Collector after receiving the file from the Revenue Board, decided the matter vide order dated 05.02.1997. Before the District Collector, the State Government produced jamabandi for samvat years 2051 to 2054 to show that the land is recorded as gair-khatedari land of the Gurudwara Chak 52F so there is no need for any proceedings.

Learned counsel for the petitioner vehemently argued that upon perusal of the order passed by the District Collector after remand from the Revenue Board will show that it is not a decision as directed by the Board of Revenue while remitting the

matter. The order has been passed observing that at present in the revenue record there is an entry in favour of the Gurudwara, therefore, there is no need to proceed in the matter. Learned counsel for the petitioner also invited my attention towards Annex.-2 whereby the Addl. Collector (Vigilance), Sriganganagar rejected the application filed by the villagers for cancellation of the allotment. That order was never challenged by any of the parties but by adopting other method while making a reference upon application filed by the villagers the matter was sent to the Revenue Board and since earlier the Revenue Board accepted the reference vide order dated 07.03.1986, however, upon review of the order dated 07.03.1986 the matter was remitted to the District Collector and order dated 07.03.1986 was recalled, therefore, the matter only required to be decided afresh in the light of the direction of the Board of Revenue whether any reference is required to be made or not. It is also observed in the order dated 07.01.1992 that, -

> "The perusal of the record shows that Kesar Singh was dead even when notices were sent to him. There is a report of the process server to this effect. Even the order of the reference shows that Kesar Singh had died before the reference was made. In the present circumstances no order can be passed by the Board in it. The reference was made against the dead person and without hearing the parties as such this reference cannot therefore be accepted. It will be in the fitness of things that the case is sent back to the learned Collector with

> a direction that he may decide the case afresh after hearing both the parties."

Learned counsel for the petitioner contended that the reference made by the Collector vide order dated 22.04.1985 was not accepted by the Revenue Board and matter was remitted to the District Collector whether reference can be made against dead person; meaning thereby, allotment made in favour of late Kesar Singh, grand-father of the petitioner was intact when the reference made by the District Collector was not accepted by the Revenue Board. It is argued that the Collector was only to decide whether reference can be made upon the application filed by the villagers but, vide the impugned order dated 05.02.1997, the Collector, Sriganganagar decided the matter which is not permissible under the law. According to the learned counsel for the petitioner, the allotment which attained finality vide Annex.-2 could only be set aside in the reference by the Revenue Board; but, here in the present case, the question was whether any reference could be made which was to be decided by the District Collector after remand of the matter by the Board of Revenue. The District Collector has no jurisdiction to decide the matter. He was only required to decide whether reference could be made or not because earlier the reference was made against dead person Kesar Singh. In these circumstances, learned counsel for

the petitioner submits that the order impugned dated 05.02.1997 may be quashed.

Learned counsel for the State vehemently contended that in this case the application filed by the villagers against illegal allotment made in favour of Kesar Singh was decided and the Revenue Board remitted the matter to the District Collector since the reference was made against dead person and after receiving the file from the Revenue Board since the Patwari Halka reported that the land already stands in the name of Gurudwara Chak 52F therefore no interference was called for.

I have perused the entire record of the case.

After recalling the order dated 07.03.1986, the Revenue Board remitted the case to the District Collector because the reference had been made against dead person and the same could not be accepted without hearing the parties. In the circumstances, after the case was remitted, the District Collector was only required to decide whether reference could be made or not; but, instead of deciding the question whether reference set out could be made in the facts and circumstances, the District Collector has decided the matter as a matter of fact in

compliance of the order dated 07.03.1986 which did not exist after having been recalled by the Board of Revenue while allowing the review petition. Therefore, obviously the District Collector has acted without jurisdiction while passing the impugned order. In the facts and circumstances of the case, I deem it just and proper to set aside the order impugned dated 05.02.1997 (Annex.-6) and direct the District Collector, Sriganganagar to decide the case in compliance of the order passed by the Board of Revenue 07.01.1992 whether reference can be made. The District Collector is further directed to provide opportunity of hearing to all the effective parties, including the Gurudwara Chak 52F and decide the matter within six months.

The writ petition is disposed of with aforesaid direction. No order as to costs.

**(Gopal Krishan Vyas) J.**